

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DUANE ELLIOTT PRICE, SR.,

Plaintiff,

DECISION AND ORDER

04-CV-6487L

v.

DAN ENGERT, et al.,

Defendants.

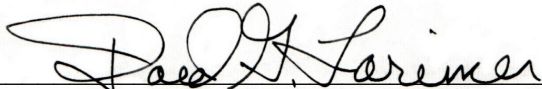
This Court referred all pretrial motions to United States Magistrate Judge Marian W. Payson pursuant to 28 U.S.C. § 636(b). Plaintiff, Duane Elliott Price, Sr. (“Price”), filed a motion to amend his *pro se* complaint. Magistrate Judge Payson reviewed submissions from the parties and issued a Report and Recommendation (Dkt. #42) that Price’s motion to amend be denied. Price did not file any objections to the Report and Recommendation.

Plaintiff sought to add Dr. James Hohensee, a physician at the Niagara County Jail, and Niagara County Sheriff Thomas A. Beilein. Magistrate Judge Payson carefully analyzed the law and the facts of this case. I agree with her finding that plaintiff failed to state a claim upon which relief may be granted. Although leave to amend is freely granted, in this case plaintiff has failed to make sufficient allegations to support a constitutional claim.

CONCLUSION

I accept and adopt the Report and Recommendation (Dkt. #42) of United States Magistrate Judge Marian W. Payson. Plaintiff's motion to amend the complaint (Dkt. #33) is denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
February 20, 2007.